

Decision Notice

Decision 149/2018: Mr M and Highland Council

Parking Enforcement Order / Mallaig car parks: Failure to respond within statutory timescales

Reference No: 201801385

Decision Date: 2 October 2018



Scottish Information
Commissioner

Summary

Highland Council (the Council) was asked for information relating to a parking enforcement order, ownership and restrictions for West Bay Car Park (Mallaig) and maintenance information for East Bay Car Park (Mallaig).

This decision finds that the Council failed to respond to the request and requirement for review within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA)/the Environmental Information (Scotland) Regulations 2004 (the EIRs).

The Commissioner has ordered the Council to comply with the requirement for review.

Background

Date	Action
14 May 2018	Mr M made an information request to the Council.
	The Council did not respond to the information request.
18 July 2018	Mr M wrote to the Council requiring a review of its failure to respond.
	Mr M did not receive a response to his requirement for review.
21 August 2018	Mr M wrote to the Commissioner's Office, stating that he was dissatisfied with the Council's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. The enforcement provisions of FOISA apply to the enforcement of the EIRs, subject to specified modifications – see regulation 17.
13 September 2018	The Council was notified in writing that an application had been received from Mr M and was invited to comment on the application.
27 September 2018	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. It is apparent from the terms of the request that at least some of the information caught by it will be environmental information as defined by regulation 2(1) of the EIRs. *In Decision 218/2007 Professor A D Hawkins and Transport Scotland*¹, the Commissioner confirmed at paragraph 51 that where environmental information is concerned, there are two separate statutory frameworks for access to that information and, in terms of the legislation, an authority is required to consider the request under both FOISA and EIRs.

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2007/200600654.aspx>

2. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case. The same timescale is laid down by regulation 5(2)(a) of the EIRs.
3. It is a matter of fact that the Council did not provide a response to Mr M's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA and regulation 5(2)(a) of the EIRs.
4. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. Again, this is subject to qualifications which are not relevant in this case. The same timescale is laid down by regulation 16(4) of the EIRs.
5. It is a matter of fact that the Council did not provide a response to Mr M's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.
6. The Council confirmed that it had received Mr M's request and requirement for review and apologised to the Commissioner that Mr M had not received a response to his request. It explained that the request had been allocated to a member of staff to deal with, but that no action had been taken. The Council stated that, due to the complexities of this request, it required input from three different parts of the Council and that the request should not have been directed to one particular service.
7. Following receipt of Mr M's request for review, the Council's Freedom of Information Officer had contacted all of the relevant officers about this outstanding request, but was still not in a position to provide a response to Mr M.
8. The Council confirmed that the Commissioner will be provided with a copy of the response it intends to send to Mr M. This had not been done at the time of this decision.
9. The remainder of section 21 and regulation 16 sets out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Council failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21/regulation 16.
10. When issuing its response, the Commissioner recommends that the Council apologises to Mr M for its failure to comply.

Decision

The Commissioner finds that Highland Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA)/the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr M. In particular, the Council failed to respond to Mr M's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulation 5(2) and 16(4) of the EIRs.

The Commissioner requires the Council to provide a response to Mr M, by **Friday 16 November 2018**.

Appeal

Should either Mr M or Highland Council wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Enforcement

If Highland Council (the Council) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Alison Davies
Deputy Head of Enforcement

2 October 2018

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info